

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 1704 - SB 2396

February 26, 2020

SUMMARY OF BILL: Creates a Class E felony offense of assault against a law enforcement officer with a mandatory minimum sentence of 30 days of incarceration.

Creates a Class E felony offense of assault against a correctional officer, guard, jailer, or other full-time employee of a penal institution, private detention facility, local jail or workhouse with a mandatory minimum sentence of 30 days of incarceration to be served consecutive to any current sentence unless the district attorney agrees to a concurrent sentence.

Enhances the offense of aggravated assault committed against a law enforcement officer, correctional officer, guard, jailer, or other full-time employee of a penal institution, private detention facility, local jail or workhouse who is discharging or attempting to discharge official duties by one classification.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – \$10,828,300 Incarceration*

Decrease Local Expenditures – \$223,700/FY20-21 and Subsequent Years

Assumptions:

Sentence Length

- The proposed legislation establishes mandatory sentence minimum for created Class E felony offenses. This analysis assumes that all convicted offenders currently serve the mandatory minimums outlined in the legislation. Further, if convicted of a crime with an average sentence that exceeds the mandatory minimum, this analysis assumes that the offender will serve the established average sentence length; therefore, any impact resulting from the establishing of mandatory sentence minimums is estimated to be not significant.

Assault of Law Enforcement Officer

- According to the *TBI Law Enforcement Officers Killed or Assaulted 2018* publication, in 2018, law enforcement agencies reported that 1,290 officers were victims of simple assault.

- This analysis estimates 10 percent, or 129 ($1,290 \times 10\%$), of such offenses will result in a Class E felony law enforcement officer assault admission.
- According to the DOC, the average operating cost per offender per day for calendar year 2020 is \$75.52.
- The average time served for a Class E felony is 1.35 years.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.81 percent per year for each of the past 10 years (from 2008 to 2018), yielding a projected compound population growth rate of 8.37 percent. Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for 11 ($129 \times 8.37\%$) additional admission for a total of 140 ($129 + 11$).
- According to the Department of Correction (DOC), 30.4 percent of offenders will re-offend within one year of their release. A recidivism discount of 30.4 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($140 \text{ offenders} \times 30.4\% = 43 \text{ offenders}$).
- Pursuant to Tenn. Code Ann. § 9-4-210, 97 offenders ($140 - 43 \text{ recidivism discount}$) will be admitted every year serving an additional 493.09 days (1.35×365.25). The annualized increase in state incarceration expenditures is estimated to be \$3,612,101 ($\$75.52 \times 493.09 \times 97$).
- This analysis assumes individuals convicted of Class E felonies would be convicted of Class A misdemeanors under current law.
- This analysis assumes offenders are spending an average of 15 days in local jail for such Class A misdemeanor convictions.
- The average cost to local governments to house an inmate in a local jail facility is \$64 per day.
- The proposed legislation will result in a decrease in local incarceration expenditures estimated to be \$123,840 ($\$64 \times 129 \text{ offenders} \times 15 \text{ days}$) in FY20-21 and subsequent years.

Assault of Jail or Prison Employee

- Based on information provided by the DOC, the average number of assault- staff no injury or minor injury offenders in the Tennessee Offender Management Information System (TOMIS) each year over the last three years is 521.
- This analysis assumes this average is representative of 50 percent of all assault- staff no injury or minor injuries occurring to jail or prison staff statewide resulting in an estimated 1,042 ($521 \times 200\%$) offenders each year.
- This analysis estimated 10 percent, or 104 ($1,042 \times 10\%$), of such offenses will result in an admission resulting from a Class E felony law enforcement officer assault conviction.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.81 percent per year for each of the past 10 years (from 2008 to 2018), yielding a projected compound population growth rate of 8.37 percent. Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for 9 ($104 \times 8.37\%$) additional admission for a total of 113 ($104 + 9$).

- According to the DOC, 30.4 percent of offenders will re-offend within one year of their release. A recidivism discount of 30.4 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($113 \text{ offenders} \times 30.4\% = 34 \text{ offenders}$).
- Pursuant to Tenn. Code Ann. § 9-4-210, 79 offenders ($113 - 34 \text{ recidivism discount}$) will be admitted every year serving an additional 493.09 days (1.35×365.25). The annualized increase in state incarceration expenditures is estimated to be \$2,941,814 ($\$75.52 \times 493.09 \times 79$).
- This analysis assumes individuals convicted of Class E felonies would be convicted of Class A misdemeanors under current law.
- This analysis assumes offenders are spending an average of 15 days in local jail for such Class A misdemeanor convictions.
- The proposed legislation will result in a decrease in local incarceration expenditures estimated to be \$99,840 ($\$64 \times 104 \text{ offenders} \times 15 \text{ days}$) in FY20-21 and subsequent years.

Aggravated Assault of Law Enforcement Officer Enhancement

- According to the *TBI Law Enforcement Officers Killed or Assaulted 2018* publication, in 2018, law enforcement agencies reported that 867 officers were victims of aggravated assault.
- This analysis estimates 10 percent, or 87 ($867 \times 10\%$), of such offenses will result in the enhancement of such offense.
- This analysis assumes individuals are convicted of Class C aggravated assault offenses under current law.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.81 percent per year for each of the past 10 years (from 2008 to 2018), yielding a projected compound population growth rate of 8.37 percent. Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for 7 ($87 \times 8.37\%$) additional admission for a total of 94 ($87 + 7$).
- According to the Department of Correction (DOC), 46.4 percent of offenders will re-offend within three years of their release. A recidivism discount of 46.4 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($94 \text{ offenders} \times 46.4\% = 44 \text{ offenders}$).
- The average time served for a Class C felony is 3.50 years. The average time served for a Class B felony is 6.48 years. The draft legislation will result in each admission serving an additional 2.98 years ($6.48 - 3.50$).
- Pursuant to Tenn. Code Ann. § 9-4-210, 50 offenders ($94 - 44 \text{ recidivism discount}$) will be admitted every year serving an additional 1,088.45 days (2.98×365.25). The annualized increase in state incarceration expenditures is estimated to be \$4,109,987 ($\$75.52 \times 1,088.45 \times 50$).

Aggravated Assault of Jail or Prison Employee

- Based on information provided by the DOC, the average number of assault- staff serious injury offenders in the TOMIS each year over the last three years is 18 offenders.
- This analysis assumes this average is representative of 50 percent of all assault- staff serious injuries occurring to jail or prison staff statewide resulting in an estimated 36 (18 x 200%) offenders each year.
- This analysis estimated 10 percent, or 4 (36 x 10%), of such offenses will result in an admission resulting will result in the enhancement of such offense.
- This analysis assumes individuals are convicted of Class C aggravated assault offenses under current law.
- Population growth will not impact these admissions.
- According to the Department of Correction (DOC), 46.4 percent of offenders will re-offend within three years of their release. A recidivism discount of 46.4 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (4 offenders x 46.4% = 2 offenders).
- The average time served for a Class C felony is 3.50 years. The average time served for a Class B felony is 6.48 years. The draft legislation will result in each admission serving an additional 2.98 years (6.48 – 3.50).
- Pursuant to Tenn. Code Ann. § 9-4-210, 2 offenders (2 – 2 recidivism discount) will be admitted every year serving an additional 1,088.45 days (2.98 x 365.25). The annualized increase in state incarceration expenditures is estimated to be \$164,399 (\$75.52 x 1,088.45 x 2).

Total Incarceration Costs

- The proposed legislation will result in a recurring increase in state incarceration expenditures estimated to be \$10,828,301 (\$3,612,101 + \$2,941,814 + \$4,109,987 + \$164,399).

Total Impact to Local Government

- The proposed legislation will result in recurring decrease in local expenditures estimated to be \$223,680 (\$123,840 + \$99,840).

Courts, Public Defenders, and District Attorneys

- The courts, public defenders, and district attorneys can accommodate any impact within their existing resources. Any impact to the court system is estimated to be not significant.

*Tennessee Code Annotated, Section 9-4-210, requires that: *For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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